

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.111 of 2013

Arising Out of PS. Case No.-75 Year-2010 Thana- Puraini District- Madhepura

Mukesh Ram S/o Buchhi Ram Resident of Village- Ambedkar Chowk
Purainee, Police Station- Purainee, District- Madhepura

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (SJ) No. 161 of 2013

Arising Out of PS. Case No.-75 Year-2010 Thana- PURAINI District- Madhepura

Indal Sharma S/o Sarju Sharma Resident of Village- Ambedkar Chowk
Purainee, Police Station- Purainee, District- Madhepura.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (SJ) No. 111 of 2013)

For the Appellant/s : Mr. Ajit Kumar Ojha, Advocate
Mr. Prince Kumar Mishra, Amicus Curiae.
For the State : Smt. Abha Singh, APP.

(In Criminal Appeal (SJ) No. 161 of 2013)

For the Appellant/s : Mr. Ajit Kumar Ojha, Advocate.
Mr. Prince Kumar Mishra, Amicus Curiae.
For the State : Smt. Abha Singh, APP.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 29-10-2018

Heard learned counsel for the appellants, Mr. Prince Kumar Mishra, learned Amicus Curiae for the appellants and learned APP for the State on these criminal appeals.

2. These criminal appeals have been preferred against the Judgment and Order of conviction dated 15.12.2012 and order of sentence dated 20.12.2012 passed by Ad hoc Additional Sessions Judge-I, Madhepura in Sessions Trial No. 146 of 2011



arising out of Puraini P.S. Case No. 75 of 2010, whereby the learned trial court acquitted the accused Sikendar Ram while convicted the accused Mukesh Ram and Indal Sharma for the offence punishable under Section 376 of the Indian Penal Code and sentenced them to undergo R.I. for ten years and slapped them with the fine of Rs. 2000 each and in case of default of payment of fine to further undergo S.I. for two months under the aforesaid Section.

3. Factual matrix of the case is that Puraini P.S. Case No. 75 of 2010 was instituted under Sections 376 and 506/34 of the Indian Penal Code against the accused Mukesh Ram, Indal Sharma and Sikendra Ram on the basis of the written report dated 04.08.2010 of Kanchan Devi, wife of Kailash Singh with the allegation in succinct that during their absence, Mukesh Ram and Indal Sharma used to pay visit their house and they committed rape against her minor daughter namely Mina Kumari aged about 12 years forcibly on the point of knife and weapon, but her daughter did not divulge the occurrence to her scaringly. 5-6 months later, when she appeared to be pregnant, she grilled her daughter about her pregnancy, then she divulged her that Mukesh Ram and Indal Sharma forcibly committed rape against her on the point of knife and weapon and extended



threatening of dire consequence in case of divulgence of the occurrence to her mother and due to the aforesaid threat, her daughter did not divulge her the occurrence earlier. Then she organised a panchayati in the village, but brother of the accused Mukesh Ram namely Sikendar Ram extended threatening of dire consequence to them in the panchayati in case of implication of his brother in the case resultantly Panchayati was failed and the villagers asked her to lodge the case in the police station. Then she filed this case.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the aforesaid accused persons under Sections 376 and 506/34 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and after commitment and on transfer finally the case came in the seisin of Ad hoc Additional Sessions Judge-I, Madhepura for trial.

6. Charge against the accused persons, namely, Mukesh Ram, Indal Sharma and Sikendar Ram was framed under Sections 376 and 506 of the Indian Penal Code. Charges



were read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses namely, Gajendra Yadav as PW-1, Rajo Sharma as PW-2, Victim Mina Kumari as PW-3, informant Kanchan Devi as PW-4, Dr. Ashok Kumar Verma who headed the medical board conducting the examination of the victim as PW-5, Kailash Singh as PW-6 and Dr. Ranjana Kumari, one of the member of the medical board as PW-7. Out of the aforesaid witnesses, PW-1 turned hostile. Prosecution has also filed and proved several documents by way of documentary evidence in the case.

8. Statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. Accused persons have neither adduced any ocular nor documentary evidence in buttress of their case.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid Judgment and Order of conviction and sentence as detailed in the earlier paragraph.



10. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, convict Mukesh Ram has preferred Criminal Appeal No. 111 of 2013 and convict Indal Sharma has preferred Criminal Appeal No. 161 of 2013.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellants and learned Amicus Curiae that there is no eye witness of the occurrence. PW-2 happens to be hearsay witness of the case while PW-3 is the victim, PW-4 is the informant and PW-6 is the father of the victim. They are interested witnesses of the case. It is further submitted that as per the account of the victim, perception of threat sustained on her only for one day. PW-6 Kailash Singh who happens to be father of the victim has stated that the victim had divulged the occurrence of rape against her by the accused persons Mukesh Ram and Indal Sharma on the very date of occurrence which means that the prosecution party had learnt about the occurrence on the very date of occurrence, but the F.I.R. was lodged by it after



abnormal and inordinate delay of around six months which creates serious doubt about the prosecution case. It is further submitted that as per the prosecution case and account of PW-3, PW-4 and PW-6, a panchayati was organised regarding the occurrence, but PW-2 Rajo Sharma who happens to be neighbour of the informant has denied the factum of organizing any panchayati in the village and moreover no member of the punches has been examined by the prosecution in corroboration of the aforesaid case of the prosecution. It is further submitted that as per the account of PW-2 Rajo Sharma, accused persons are residing in Punjab and the victim has become pregnant by someone else and as per the account of PW-2, PW-3 and PW-6, dispute of homestead land is pending between the prosecution party and accused Mukesh Ram and Indal Sharma. Aforesaid statement of the said witnesses indicates that prosecution parties are on inimical terms with the appellants and the informant has falsely implicated the appellants in the case due to the aforesaid animosity in a pre-planned manner 5-6 months later to the occurrence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charge levelled against the appellants beyond all reasonable doubts by adducing consistent, trustworthy, reliable



and worth credence evidence. Hence, aforesaid judgment and order of conviction and sentence passed against the appellants is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence submitted that the victim in her examination-in-chief has supported the prosecution case *in toto*. PW-4 who happens to be mother of the victim and PW-6 who happens to be father of the victim have also corroborated the aforesaid occurrence. Doctors PW-5 and PW-7 have found fetus of around five months old in the womb of the victim who later on died and the learned trial court correctly appreciating the facts and evidence available on record has rightly passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and these criminal appeals are shorn of merit and are liable to be dismissed.

14. From perusal of the record, it appears that to substantiate its case, the prosecution has examined five material witnesses in the case. Out of them, PW-1 turned hostile while PW-2 Rajo Sharma who happens to be neighbour of the informant does not appear to be eye witness of the occurrence as



he has not witnessed the occurrence of committing rape against the victim by the appellants rather is a hearsay witness. Moreover, said witness in para-2 of his examination-in-chief has stated that the victim Mina Kumari had divulged the occurrence of committing rape against her by Mukesh Ram and Indal Sharma to him but the victim Mina Kumari has not corroborated the factum of divulgence of the aforesaid occurrence to PW-2 Rajo Sharma. Thus the aforesaid statement of PW-2 Rajo Sharma remains uncorroborated and hence it is not admissible in evidence even as a hearsay witness for want of any corroboration. Victim Mina Kumari (PW-3) has supported the occurrence of committing rape against her by the appellants Mukesh Ram and Indal Sharma forcibly in consonance to the prosecution case in her examination-in-chief. But from perusal of the para-19 of her cross-examination, it appears that she has completely demolished her statement as given by her in her examination-in-chief as in the said para she has stated that the accused persons did not commit any occurrence against her barring assaulting and threatening. Though informant Kanchan Devi (PW-4) has stated in her examination-in-chief about the occurrence of committing rape against her daughter on the point of knife 5-6 months back extending threatening of dire



consequence to her parents and subsequently on becoming pregnant of her daughter, on grilling divulgence of the aforesaid occurrence to her by the victim. In Para-11 of her cross-examination, she has also stated that her daughter had not divulged the occurrence to her for 4-5 months of the occurrence as she was scared by the accused persons. She has further stated in para-12 of her cross-examination that her daughter remained scared for 4 months. But in quite contradiction to the aforesaid statement of PW-4, Kailash Singh (PW-6) who happens to be husband of the informant and father of the victim has stated in his examination in chief that on the date of occurrence when he arrived at his house at 7 PM, victim Mina Kumari divulged him and his wife that Indal Sharma and Mukesh Ram had committed rape against her on the said date at 10 AM. In Para-7 of his cross-examination, he has further submitted that he had not seen the occurrence rather her daughter had divulged the same to him and victim Mina Kumari (PW-3) has stated in Para-10 of her cross-examination that perception of threat of knife sustained for one day and thereafter there was no apprehension in her mind. Aforesaid statement of the victim and PW-6 (father of the victim) indicates that alleged occurrence of committing rape against the victim by the appellants came to the knowledge of



the father of the victim and the informant as well on the very date of occurrence. Then million dollar question arises as to why the informant and her husband (PW-6) did not rush to the police station and informed the occurrence to the police and lodged the F.I.R. on the date of occurrence rather lodged the same 5-6 months later to the occurrence. Though to explain the aforesaid delay in lodging the F.I.R., the prosecution has advanced the case that after learning the occurrence of pregnancy of her daughter, they organized panchayati, but as Sikendar Ram who happens to be brother of the accused Mukesh Ram extended threatening of dire consequence in case of implication of his brother in the case in the panchayati, the panchayati stood failed. In substantiation of the aforesaid case, PW-6 has also stated about organizing of the panchayati in the village regarding the occurrence. But PW-2 who happens to be co-villager and neighbour of the victim has stated in Para-4 of his cross-examination that no panchayati was organized regarding the aforesaid occurrence and moreso no member of the punches has been examined by the prosecution in corroboration of the aforesaid prosecution case. Thus the prosecution has utterly and miserably failed to assign any plausible and convincing reason to explain the aforesaid



abnormal and inordinate delay of 5-6 months in lodging the F.I.R regarding the occurrence and aforesaid unexplained abnormal and inordinate delay of 5-6 months in lodging the F.I.R. regarding the aforesaid occurrence creates serious doubt about the prosecution case.

15. PW-2 has stated in Para-2 of his examination-in-chief that the appellants had no visiting terms to the informant. In Para-3 of his cross-examination he has further stated that he had not seen Mukesh and Indal Sharma visiting the house of Kanchan (informant). In Para-6 of his cross-examination, he has further stated that they always reside in Punjab. In Para-3 and 4 of his cross-examination, he has also stated that the informant used to run country made liquor shop. She used to vend liquor at the shop. Her daughter also used to sit on the said shop. After the informant her daughter used to vend liquor on the shop till 11-12 PM in the night and used to come in contact with several persons in the course of vending liquor. In Para-7 of his cross-examination he has also stated that the victim had become pregnant by some other person. The aforesaid statement of PW-2 also creates serious doubt and complicity of the appellants in the occurrence.

16. Though the informant in her testimony has made



an abortive bid to conceal the pendency of any dispute with the accused persons but PW-2 in Para-4, PW-3 in Para-20 and PW-6 in Para-8 of their respective cross-examination have unanimously stated that dispute of homestead land is pending between the father of the victim (PW-6) and the accused persons. The aforesaid statement of said witness indicates that both the parties are on inimical terms. Animosity cuts both the edge. But in view of the aforesaid contradiction between the statement of the witnesses regarding the time of learning of the occurrence, holding of the panchayati, visiting of the accused persons at the house of the victim and denial of the victim regarding committing any occurrence against her by the appellants barring assault and threatening and in view of the aforesaid statement of PW-2 that the appellants had no visiting terms to the house of the victim, victim used to vend liquor at the liquor shop of the informant after the informant till 11-12 PM in the night and several persons used to come in contact with her and she became pregnant by some other person, the accused persons always reside in Punjab, false implication of the appellants in the case by the informant due to aforesaid animosity cannot be ruled out.

17. In the facts and circumstances of the case, I find



and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charge levelled against the appellants beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court against the appellants is set aside and the appellants are acquitted from the charge levelled against them. As the appellants are on bail, they are discharged from the liability of their bail bonds.

18. Accordingly, these criminal appeals are allowed.

19. Let a copy of the first and last page of this judgment be handed over to the learned Amicus Curiae, Mr. Prince Kumar Mishra and the learned Amicus Curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
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